

TOWNSEND AND TOWNSEND AND CREW LLP
MARC M. GORELNIK (State Bar No. 166833)
MARY L. SHAPIRO (State Bar No. 201199)
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
Email: mmgorelnik@townsend.com
mlshapiro@townsend.com

Attorneys for Plaintiff
WIND OF TRADE LLC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WIND OF TRADE LLC, a Nevada limited
liability company,

Plaintiff,

v.

MOSTAG INTERNATIONAL, INC., a
Pennsylvania corporation,

Defendants.

Case No. CV 07 6280SC

**DECLARATION OF MARY L. SHAPIRO IN
SUPPORT OF WIND OF TRADE'S *EX PARTE*
MOTION FOR TEMPORARY RESTRAINING
ORDER**

I, Mary L. Shapiro, declare as follows:

1. I am a member of the Bar of the State of California and admitted to practice before this Court. I am a member of the law firm of Townsend and Townsend and Crew LLP, counsel for Plaintiff Wind of Trade LLC ("Wind of Trade").

2. The following facts are within my personal knowledge and I could and would be competent to testify to them if called as a witness in this matter.

3. On November 28, 2007, we learned that Mostag International ("Mostag") was selling utility glove products through Amazon.com.

4. On that same day, we researched Mostag International's products through the link provided to us, at <http://www.amazon.com/b?ie=UTF8&me=AE3L8DO5YKOR4>, and found multiple references to Mostag products referenced as "OVE GLOVE" products, which are illustrated below:

A. **"New Improved Original OVE GLOVE Hot Surface Handler with Non-Slip Silicone Grip" "OVE' GLOVE-Get a Grip On Hot Pots and Pans!"**

A true and correct copy of the home page for this product, as displayed on Amazon.com on November 28, 2007, is attached hereto as Exhibit A.



B. **"OVE GLOVE-Get a Grip On Hot Pots and Pans!"** A true and correct copy of the home page for this product, as displayed on Amazon.com on November 28, 2007, is attached hereto as Exhibit B.



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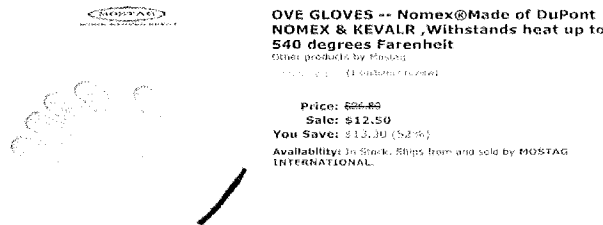
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C. **“OVE GLOVES – Nomex® Made of DuPont NOMEX & KEVALR [sic], Withstands heat up to 540 degrees Farenheit [sic]”** A true and correct copy of the home page for this product, as displayed on Amazon.com on November 28, 2007, is attached hereto as Exhibit C.



D. **“OVE GLOVE (2 GLOVES VALUE PACK) – Extra Long Cuff Provide Extra Protection for Wrist & Arm, Nomex® -- Made of DuPont NOMEX & KEVALR [sic], Withstands heat up to 540 degrees Farenheit [sic]”** A true and correct copy of the home page for this product, as displayed on Amazon.com on November 28, 2007, is attached hereto as Exhibit D.



5. On November 29, 2007, we drafted and transmitted a demand letter to Mostag, which we attempted to send by facsimile to (215) 537-1192 with a confirmation copy to follow by FedEx service, which package was addressed to William Pan, Manager, Mostag International, 659 Adams Avenue, Philadelphia, PA 19120. Mostag's contact information was obtained from several online business resource services. A true and correct copy of that letter is attached hereto at Exhibit E.

6. While attempting to fax the correspondence, we learned that the above-referenced fax number was disconnected and conducted further research on the Internet. The record at the Pennsylvania Secretary of State website indicated that the business was located at 5252 Belfield Ave.,

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1 Philadelphia, PA 19144, whereas other records indicated that the company had moved to Croydon,
2 PA.

3 7. On November 30, 2007, we contacted Mostag International to confirm that the
4 Croydon contact information was current and transmitted the aforementioned correspondence by
5 facsimile to (215) 781-6606 with a confirmation copy following by certified mail/return receipt to a
6 PO box provided by a company representative, namely, P.O. Box 84, Croydon, PA 19021.

7 8. Attached at Exhibit F is a true and correct copy of the fax confirmation record for our
8 transmission on November 30, 2007.

9 9. We tracked the certified mail/return receipt number and learned that the addressee
10 refused delivery of the letter on December 5, 2007. A true and correct copy of the U. S Postal Service
11 tracking record is attached hereto as Exhibit G.

12 10. Subsequently, we identified a physical address for Mostag International, which is
13 1025 A Washington Avenue, Croydon, PA 19021.

14 11. On December 10, 2007, I called the phone number (215) 781-8882 to reach Mostag
15 International in order to confirm receipt of the facsimile sent on November 29, 2007.

16 12. A man answered and I asked to speak with Mr. William Pan.

17 13. He inquired about the nature of my request to Mr. Pan. I repeatedly asked if he was
18 Mr. Pan and he would not respond.

19 14. I further identified myself as "Mary Shapiro from Townsend and Townsend and
20 Crew" and indicated that I was following up on correspondence sent to Mr. Pan concerning the "'Ove'
21 Glove."

22 15. Though he still did not confirm that he was Mr. Pan, he acknowledged receiving
23 some faxes, but would not state that one of them was sent to Mostag on behalf of Wind of Trade.

24 16. I again requested to speak with Mr. Pan and the individual who had answered the
25 phone again inquired about the nature of my requested contact. I again indicated that I was following
26 up on correspondence sent to Mr. Pan concerning the "'Ove' Glove."

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1 17. He again acknowledged receiving some faxes, but could not or would not state that
2 one of them was ours.

3 18. He definitively stated that he had not received correspondence by mail pertaining to
4 the 'Ove' Glove.

5 19. The person who answered the phone then hung up.

6 20. Although we had requested a reply to our correspondence dated November 29, 2007
7 by December 7, 2007, Mostag did not timely reply.

8 21. We again reviewed the Mostag product placements on Amazon.com and observed
9 that Mostag appeared to have modified the descriptions and that the titles of their products, which
10 were no longer directly referenced as "OVE GLOVE." A true and correct copy of the search results
11 on Amazon.com for "Mostag International" is attached hereto as Exhibit H.

12 22. Nevertheless, a search for "OVE' GLOVE" on the Amazon.com website displays
13 multiple Mostag products. A true and correct copy of the search results on Amazon.com for "OVE
14 GLOVE" is attached hereto at Exhibit I.

15 23. On behalf of Wind of Trade, we filed an application for the 'OVE' GLOVE word
16 mark on November 12, 2002. A registration for the word mark issued on February 4, 2003 under
17 Registration No. 2,683,417 by the United States Patent and Trademark Office ("USPTO"). A true and
18 correct copy of the 'OVE' GLOVE registration is attached hereto as Exhibit J.

19 24. On behalf of Wind of Trade, we filed an application for the "Design Mark" on
20 September 28, 2006, which is pending in the USPTO under Serial No. 77/009,941 and was allowed on
21 August 7, 2007. A true and correct copy of the record for this application is attached hereto at
22 Exhibit K.

23 25. On behalf of Wind of Trade, we filed an application on August 22, 2007 for the
24 "New Design Mark," which is pending under Serial No. 77/262,146. A true and correct copy of the
25 record for this application is attached hereto at Exhibit L.

26 26. The recently filed application has been examined and there are only mere formalities
27 to address on behalf of applicant Wind of Trade, namely providing a declaration and claim of

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1 ownership for U.S. Registration No. 2,683,417. Moreover, the examining attorney has determined
2 that the New Design Mark is registrable, indicating that the mark is inherently distinctive.
3

4 I declare under penalty of perjury under the laws of the State of California that the foregoing is
5 true and correct.

6 Executed this 12th day of December, 2007, at San Francisco, California.

7
8 By: 
9 Mary L. Shapiro

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